1969

Don Layton, aka Donald W. Layton, and Helen D. Layton, His Wife v. Gordon E. Holt and S. John Webber; Salt Lake County, A Body Politic of The State of Utah; Marvin Jenson Commissioner : Petition For Rehearing

IN THE SUPREME COURT OF THE STATE OF UTAH

DON LAYTON, aka Donald W. Layton, and HELEN D. LAYTON, his wife, Plaintiffs and Appellants, -vs- GORDON E. HOLT AND S. JOHN WEBBER; SALT LAKE COUNTY, A body politic of the Stateof Utah; MARVIN JENSON, Commissioner, Defendants and Respondents.	Case No. 11298

PETITION FOR REHEARING

DON LAYTON
220 Banks Court
Salt Lake City, Ut. 84102
For Appellants

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Attorney for Respondents

CASES CITED

STATUTES CITED

TEXTS CITED

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Comes now the appellant, Don Layton, and respectfully petitions the Court to grant a rehearing and to reconsider the above cause, upon the following grounds:

OUTLINE OF PETITION

A. 1. The Court erred in presuming a tax title had been created.

2. The Court erred concerning the meaning of the word possession as used in the statute.

3. The Court erred in concluding that respondents had perfected rights to invoke the aid of the statute of limitations.

B. 1. The opinion is contradictory to:

a. U.S. Constitution 14th Amendment.

b. Utah State Constitution, Art. 6, Sections 23 & 27

c. Utah State Statutes 78-12-7.1

A

1. The Court erred in assuming that respondents had purchased a "tax title" for the reason that at the commencement of this action, no tax title as defined in the statute existed.

> 78-12-5.3 Definition of "tax title" . . . The term "tax title" . . . means any title to real property, whether valid or not . . whereby the property is relieved from a tax lien.

The record clearly shows (Certificate in appellant's abstract) that the County's equity in the property by virtue of non payment of taxes had never been cleared. This lien would itself have been barred long ago as would a judgment, or has it been maintained as a debt to the State under Constitutional provision, Article 6 Sec. 27 Utah State Constitution. Cooley's Constitutional Limitations Vol II p. 770 states:

> "It is certain that he who has satisfied a demand by the operation of the statute of limitations is equally protected. In both cases the demand is gone, and to restore it would be to create a new contract for the parties, — a thing quite beyond the power of legislation."

It follows logically that if taxes are debts against the state, then they are never relieved until the state gets the money for them by selling or assigning its lien. This provision certainly sets the date when the tax title could start to run.

Section 59-10-1 Utah Code Annotated 1953 states:

> "Tax has effect of judgment — lien has effect of execution — Every tax has the effect of a judgment against the person and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof." (Emphasis ours)

When a County offers property for sale during May, it would have to be similar to a sheriff's sale. If there are no buyers at a sheriff's sale, the Court retains the property until it finds a buyer and then offers it at a new sale. Since the County's interest is bound by the limitations imposed by the Constitution and statutes, its claims or lien on the property can never grow without some adverse act.

Appellant cannot see how the holding of property by the County can improve or ripen an imperfect title or change a lien against the property to ownership of the whole property. Cooley's Const. Limitations Vol. II p. 768 states:

> "Statutes making defective records evidence of valid conveyances are of a similar nature and these usually, perhaps always, have reference to records before made, and provide for making them competent evidence where before they were merely void. But they divest no title, and are not even retrospective in character. They merely establish what the legislature regards as a reasonable and just rule for the presentation by the parties of their rights before the courts in the future.
>
> But there are fixed bounds to the power of the legislature over this subject which cannot be exceeded. As to what shall be evidence, and which party shall assume the burden of proof in civil cases, its authority is practically unrestricted, so long as its regulations are impartial and uniform; but it has no power to establish rules which, under pretense of regulating the presentation of evidence, go so far as altogether to preclude a party from exhibiting his rights."
> (emphasis ours)

2. Concerning the word possession: Constructive possession is not synonomous with adverse possession. 78-12-5.1, 78-12-5.2, and 78-12-7.1 use the word possession. It can have no greater meaning in its use therewith than it had when it referred to the possession of the owner before this section was passed. This was constructive possession and it only requires that a proper deed carrying the right to the ownership of the property be properly recorded in the County where the land is situated. It therefore follows, that for this Court to read a greater requirement pertaining to the word possession to be proven by appellants after the passage of this section than it had before was error. All these sections altered was, who had the presumption of constructive possession. It, in effect, was to make an equal situation between parties claiming the same piece of ground, and not to give one party an advantage over the other. Such as would be the case concerning vacant property. To force appellants to prove

their possession within the meaning of the prior law or a different meaning than the one respondents claim under would revert to the injustice the legislature was trying to correct. How could, under the equal protection clause, (U.S. Constitution 14th Amendment) any other interrpretation be justified?

3. The Court erred in quieting title in respondents for the reason that at the commencement of this action, respondents and their predecessors had paid no taxes on the subject property, were not, and had never been in possession or occupation thereof. Non payment is not congruous with payment. Cooley's Const. Limit. Vol. II p. 769 states:

> . . . . it would not, we apprehend, be in the power of the legislature to declare that a particular item of evidence should preclude a party from establishing his rights in opposition to it. In judicial investigations the law of the land requires an opportunity for a trial; and there can be no trial if only one party is suffered to produce his proofs. The most formal conveyance may be a fraud or a forgery; public officers may connive with rogues to rob the citizen of his property;

witnesses may testify or officers certify falsely, and records may be collusively manufactured for dishonest purposes; and that legislation which would preclude the fraud or wrong being shown, and deprive the party wronged of all remedy, has no justification in the principles of natural justice or of constitutional law. A statute, therefore, which should make a tax-deed conclusive evidence of a complete title, and preclude the owner of the original title from showing its invalidity, would be void, because being not a law regulating evidence, but an unconstitutional confiscation of property."
(Emphasis ours)

Section 78-12-5.1 and 78-12-5.2 are arbitrary and unreasonable and contrary to U.S. Constitution Amendment 14 for they make a distinction when there should not be one.

If these sections do not apply when land is occupied, then why should they apply when land is vacant. This distinction between tax debtors bears no reasonable relation to the reason for their enactment,[1] namely as a means of enforcing the collection of taxes.

1. Toronto vs. Sheffield 118 U 460, 222 P2d 594 Pt. #3.

4. The Court erred in barring appellants under the short statute 78-12-5.2 for the reason that if the tax title was initiated upon the Auditor's Tax Deed to the County, then this is in strict violation of the Constitutional provision that property may not be taken for a public purpose without just compensation. Art. 1 Section 22 Utah Constitution.

1. Section 78-12-5.1 and 78-12-5.2 is an attempt by the legislature to increase the Counties' revenue through an ambiguous law.[1] Art. 6 Sec. 23 of the Utah Constitution clearly states:

> ". . . no bill shall be passed containing more than one subject, which shall be clearly expressed in its title."

I submit that the title to the act of which sections 78-12-5.1 and 78-12-5.2 are a part is not clear as required by the above constitutional provision. This act was enacted in 1872 and was originally titled:

> "An Act Limiting the Time of Commencing Civil Actions."

1. Hansen v. Morris 3 U2d 310, 283 P2d 884. Pt. #4

and has been amended to the following:

> "An Act amending sections 104-2-5, Utah Code Annotated 1943 as amended by Chapter 18, Laws of Utah 1943; 104-2-7 Utah Code Annotated 1943 and 104-2-12, Utah Code Annotated 1943, and repealing section 104-2-5.10, as amended by Chapter19, Laws of Utah 1943 as amended by Chapter 8 Laws of Utah 1947, and enacting new laws to be known as sections 104-2-5.10 and 104-2-5.11 limiting the period within which actions may be commenced for recovery of real property sold and conveyed to the County under tax deed or for the possession thereof."

I submit that this act now covers two or more separate subjects namely:

1. Time for commencing actions.
2. The means to increase revenue[1] for the various Counties of the State and as a means to circumvent the constitutional provisions relating to:
   a. Taxation
   b. Assessment of property
   c. Taking of private property for public purpose without just compensation.

and is void and of no force and effect!

1. Carter v State Tax Commission 98 U. 96, 96 P2d 727 126 ALR 1402

Cooley's Const. Limit Vol. I p. 338 states:

Neither will a court, as a general rule pass upon a constitutional question, and decide a statute to be invalid, unless a decision upon that very point becomes necessary to the determination of the cause. "While courts cannot shun the discussion of constitutional questions when fairly presented, they will not go out of their way to find such topics. They will not seek to draw in such weighty matters collaterally, nor on trivial occasions. It is both more proper and more respectful to a co-ordinate department to discuss constitutional questions only when that is the very lis mota. Thus presented and determined, the decision carries a weight with it to which no extra-judicial disquisition is entitled."

. . . . Page 340 . . . and it is only when some person attempts to resist its operation, and calls in the aid of the judicial power to pronounce it void, as to him, his property or his rights, that the objection of unconstitutionality can be presented and sustained. Respect for the legislature, therefore, concurs with well-established principles of law in the conclusion that such an act is not void, but voidable only; and it follows, as a necessary legal inference from this position, that this ground of avoidance can be taken advantage of by those only who have a right to question the validity of the act, and not by strangers. To this extent only is it necessary to go, in order to secure and protect the rights of all persons against the unwarranted exercise of legislative power, and to this extent only, therefore, are courts of justice called on to interpose."

Therefore appellants contend that they are not barred from this action and respectfully request a rehearing upon the matter.

Respectfully Submitted,

2/25/69 Don Sayton D. L. 2/25/69

I hereby certify that I mailed two copies of this petition postpaid to respondents attorney Mary Condas Lehmer at 4528 South 2070 East, Salt Lake City, Utah 84117

2/25/69 Don Sayton D. L. 2/25/69